

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 318 of 1992

with

SPECIAL CIVIL APPLICATION No 854 of 1992

with

SPECIAL CIVIL APPLICATION 856 TO 858 OF 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SHANTILAL D DAVE

Versus

BORSAD NAGAR PALIKA

Appearance:

1. Special Civil Application No. 318 of 1992
MR MUKUL SINHA for Petitioner
MR RN SHAH for Respondent No. 1
2. Special Civil ApplicationNo 854 of 1992
MR MUKUL SINHA for Petitioner
MR RN SHAH for Respondent No. 1

ORAL JUDGEMENT

In these petitions under Article 226 of the Constitution of India the petitioners have prayed for a writ of mandamus and for any other appropriate order or direction declaring that the decision/action of the respondent of granting pensionary benefits to only those employees who retired on or after 1.1.1985 as being irrational, arbitrary, discriminatory and violative of Article 14 of the Constitution of India and for quashing and setting aside the same. The petitioners have also challenged the award of the Industrial Tribunal in Reference (IT) No.377 of 1985 to the extent the said award fixed the mode or date for the grant of the pensionary benefits on 1.1.1985 and for a further writ to direct the respondents to extend the benefits of pension/family pension at par with the employees who retired on or after 1.1.1985.

2 All the petitioners were retired as the employees of the respondent-municipality on the following dates:-

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Petition No.	Date of Retirement of the employee
1) SCA No.318/1992	10.09.1981
2) SCA No.854/1992	13.09.1983
3) SCA No.856/1992	07.11.1983
4) SCA No.857/1992	21.10.1976
5) SCA NO.858/1992	18.01.1982

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The learned counsel for the petitioners has submitted that the decision of the respondent-municipality to grant pension/family pension only to those employees who retired after 1.1.1985 is illegal and discriminatory on the following grounds:-

- (i) The Resolution of the Municipality was passed on 5.1.1991 giving the benefits of the pension / family pension to the employees who retired on or after 1.1.1985. It is submitted on the basis of the decision of the Apex Court in V.KASTURI V. MANAGING DIRECTOR, SBI (AIR 1998 SC 174) that once the employee decided to give retrospective effect to the pension scheme, it must be made applicable to all the employees including those

who had retired earlier.

(ii) It is contended in the alternative that even if the aforesaid Resolution is based on the award of the Industrial Tribunal rendered on 6.10.1992, the Tribunal has given retrospective effect to the pension scheme from 1.1.1985 and therefore the aforesaid judgement of the Apex Court would be applicable and the petitioners are entitled to get the benefit of pension.

3 On the other hand, Mr R.N.Shah, learned counsel for the municipality has submitted that as stated in the reply affidavit filed by the Chief Officer of the respondent-municipality, the Resolution dated 5.1.1991 of the Municipality was merely in compliance with the award of the Tribunal which was rendered on 6.10.1990 wherein it was categorically provided that the pension and family pension scheme of the State Government shall be applied to the employees of the respondent-municipality who retired on or after 1.1.1985. It is further submitted that there was no retrospectivity given by the Tribunal because the Reference itself was made to the Tribunal in the year 1985 as the demand was raised in the year 1985 and the same was referred by the Labour Commissioner, Gujarat State, to the Tribunal on 21.3.1985.

4 Having heard the learned counsel for the parties, it appears to the Court that the question raised in this group of matters is required to be examined in view of principles laid down by the Supreme Court in V.KASTURI (supra) wherein after an exhaustive review of all the relevant decisions of the Apex Court rendered over years, the Apex Court has laid down the following principles:-

"From the aforesaid resume of relevant decisions of this Court spread over years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly gets project.

CATEGORY I

If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get

the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara's case (supra) would cover this category of cases.

CATEGORY II

However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant Pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme."

5 It is obvious that the present group of petitioners do not fall in Category-I because none of the petitioners was eligible for pension at the time of retirement. As a matter of fact, none of the employees of the municipality was eligible to get any pension prior to 1.1.1985 and therefore the question of any of the petitioners falling in Category-I does not arise. Mr Sinha therefore endeavoured to urge that the petitioners' case would fall in Category-II. In order to substantiate the said contention, Mr Sinha has obviously argued that the pensionary benefits have been given on 5.1.1991 with retrospective effect from 1.1.1985. It is an admitted fact that the said Resolution was passed only on account of the award of the Industrial Tribunal. The said award was rendered on 5.1.1989 in a reference which was filed in the year 1985. It is pertinent to note that the demand in Reference was to give pensionary benefits to

all the employees who have retired after 1.1.1983. That demand was not accepted by the Tribunal and it was given effect only from 1.1.1985 i.e. around the time when the demand was made by the Union.

6. Mr Sinha, however, urged that in any case, the petitioners' case is squarely covered by another decision of the Supreme Court in Dhanraj Vs. State of Jammu Kashmir (1998) 4 SCC 30 wherein also one category of the employees who were eligible to get pension earlier i.e. prior to 1.1.1985 were ordered to be granted benefit of pension with retrospective effect relying on the decision in NAKARA. It was, therefore, urged that the petitioners in the present case would also be covered by the said principle.

7 It is not possible to accept the aforesaid argument because in the case of Dhanraj Vs. State of Jammu Kashmir (supra) the employer was the same and the employer had given pensionary benefits to two categories of employees. The third category of employees was left out and therefore, the Apex Court found that the decision of the employer to leave out the third category was discriminatory. In that case, therefore, the finding was that there was violation of Article 14 of the Constitution because equals were treated unequally. In the facts of the instant case, however, admittedly, no employee of the municipality who retired prior to 1.1.1985 was eligible to get pension and therefore the employer was treating all the employees equally. It was only on account of the subsequent award of the Tribunal that pensionary benefits came to be given with effect from 1.1.1985, as stated above.

In view of the above, it cannot be said that the petitioners' case would be covered by the principle laid down in the case of Dhanraj (supra). In view of the above discussion, the petitions deserve to be dismissed.

8 At this stage, Mr Sinha for the petitioners submits that the petitioners were not parties to the original reference and that their case never came to be considered because the Union itself had agreed to the cut off date being fixed at 1.1.1985. Hence, the said award or this judgement may not be made to come in the way of the petitioners for raising a fresh demand by or on behalf of the petitioners and for similarly situated persons.

Mr R.N. Shah, learned counsel for the municipality, submits that such a demand would be grossly time-barred and that it was only on account of the fact

that the date was fixed at 1.1.1985 that the Municipality did not challenge the said award and that if the award had been made applicable retrospectively, the Municipality would have certainly challenged the said award.

The Court does not express any opinion on the above issue. It is for the parties to agitate their rights before the appropriate forum in accordance with law.

9 The petitions are dismissed. Rule is discharged in each petition. There shall be no order as to costs.

(mohd)